

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Ben Francis Spradlin Jr.,

DEBTOR(S)

CASE NO: 11-03085-hb  
CHAPTER:

NOTICE OF PLAN MODIFICATION BEFORE  
CONFIRMATION, MOTIONS TO VALUE  
SECURITY, AVOID JUDICIAL LIEN, AVOID A  
NONPURCHASE-MONEY, NONPOSSESSORY  
SECURITY INTEREST AND LIEN, AND/OR TO  
ASSUME OR REJECT AN EXECUTORY  
CONTRACT/UNEXPIRED LEASE

I. NOTICE TO AFFECTED CREDITORS AND PARTIES IN INTEREST: The above-captioned debtor<sup>1</sup> previously proposed a chapter 13 plan and motions; debtor now moves, pursuant to 11 U.S.C. § 1323 and Fed. R. Bankr. P. 2002(a)(5), to modify the proposed plan and motions as detailed below:

***Debtor is amending his Chapter 13 plan to show the amount of attorney fees owed and the amount that has been paid upfront. Debtor is also amending his Chapter 13 Plan to surrender all net tax refunds and all net bonuses received during his bankruptcy.***

This modification to the chapter 13 plan and motions, and the remaining terms of the chapter 13 plan and motions set forth below, may affect your rights. Failure to object may constitute an implied acceptance of and consent to the relief requested.

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<sup>1</sup> When used herein, the term "debtor" shall apply as applicable either in the singular or in the plural, if there are joint debtors in the case.



Name of creditor and description of property securing lien	Value of Debtor's interest in property	Total of all other liens	Exemption claimed	Estimated judicial lien	Judicial lien Not avoided (see IV(B)(4) below)	Judicial lien avoided (see IV(E) below)
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**C. Valuation of Security:** The debtor moves, in accordance with 11 U.S.C. § 506, to establish the value of a lien as follows:

Name of creditor and description of property securing lien	Value of Debtor's interest in property	Holder and amount of superior liens	Estimate of creditor's claim	Value of lien (see IV(B)(4) below)	Unsecured claim after valuation (see IV(E) below)
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**D. Assumption or Rejection of Executory Contract/Unexpired Lease:** The debtor moves for the assumption of the following executory contract and/or unexpired lease. The debtor agrees to abide by all terms of the agreement and to cure any pre-petition arrearage or default in the manner below. Any executory contract or unexpired lease not specifically mentioned is rejected.

Name of Creditor and lease or contract to be assumed	Amount of regular payment	Estimated amount of Default (state if none)	Cure Provisions for any default paid by (Debtor or trustee)	Regular payments to be paid by Debtor directly to creditor beginning (month/year)
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### III. THE CHAPTER 13 PLAN: PAYMENT OBLIGATIONS OF THE DEBTOR.

**A. Payments from the debtor to the chapter 13 trustee (the "trustee"):** The debtor submits to the supervision and control of the trustee all or such portion of future earnings or other future income as is necessary for the execution of the plan. In addition, the debtor will pay to the trustee any portion of a recovery under a pre-petition claim or cause of action that constitutes disposable income or is not exempt.

The debtor shall pay to the trustee the sum of \$1,348.00 per month for a period of 3 months and payments of \$852.00 per month for a period of 57 months, unless all allowed claims (other than long-term claims) are fully paid pursuant to the plan. *In addition to the payments noted above, the debtor(s) shall pay all net federal and state tax refunds to the trustee within 10 days of receipt of such (beginning with the tax refunds due for tax year ending December 31, 2011). Such amounts shall be in addition to any confirmed plan base. In addition the payments noted above, the debtor(s) shall pay all net bonus income to the trustee within 10 days of receipt of such. Such amounts shall be in addition to any confirmed plan base.*

**B. Payments from the debtor directly to creditors:** The debtor shall pay all post-petition priority obligations, including but not limited to taxes and post-petition domestic support, and pay regular payments on assumed executory contracts or leases, directly to the holder of the claim as the obligations come due, unless otherwise ordered by the Court. The debtor may be required to pay some or a portion of pre-petition debts directly to a creditor in addition to required payments to the trustee, as indicated in paragraph II(D) above and/or in the paragraphs that follow.

**IV. PLAN DISTRIBUTIONS TO CREDITORS.** To receive a distribution from the trustee, a proof of claim, including adequate supporting documentation, must be filed with the Court. If a claim designated in this plan as secured is filed as an unsecured claim and the plan is confirmed, the claim may be treated as unsecured for purposes of plan distributions by the trustee. If a creditor files a proof of claim alleging that the claim is secured, but does not timely object to the confirmation of the plan and the claim is treated as unsecured in a confirmed plan, the claim may be treated as unsecured for purposes of plan distributions by the trustee. Confirmation of this plan does not bar a party in interest from objecting to a claim. The trustee, after the deduction of the trustee's commission and expenses, or the debtor, as indicated, shall make<sup>3</sup> payments as follows:

**A. Attorney for the debtor:**

<sup>3</sup> For co-owned property, see *In re Ware*, 274 B.R. 206 (Bankr. D.S.C. 2001) and Exhibit C to SC LBR 4003-2.

1. The debtor and the debtor's attorney have agreed to an attorney's fee in the amount of \$2,250.00 for the services identified in the Rule 2016(b) disclosure statement filed in this case. The amount of \$1,151.00 was paid prior to the filing of the case. The remaining fee shall be disbursed by the trustee as follows: Following confirmation of the plan and unless the Court orders otherwise, the trustee shall disburse \$500.00 to the attorney from the initial disbursement.<sup>3</sup> Thereafter, the balance of the attorney's compensation as allowed by the Court shall be paid, to the extent then due, with all funds remaining each month after payment of allowed secured claims and prepetition arrearages on domestic support obligations. In instances where an attorney assumes representation in a pending *pro se* case and a plan is confirmed, a separate order may be entered by the Court, without further notice, which allows for the payment of a portion of the attorney's fees in advance of payments to creditors.

2. If, as an alternative to the above treatment, the debtor's attorney has received a retainer and cost advance and agreed to file fee applications for compensation and expenses in this case pursuant to 11 U.S.C. § 330, the retainer and cost advance shall be held in trust until fees and expense reimbursements are approved by the Court. Prior to the filing of this case, the attorney has received \$ \_\_\_\_\_ and for plan confirmation purposes only, the fees and expenses of counsel are estimated at \$ \_\_\_\_\_ or less.

**B. Secured Creditor Claims:** The plan treats secured claims as follows:

1. **General Provisions:** The terms of the debtor's pre-petition agreement with a secured creditor shall continue to apply except as modified by this plan, the order confirming the plan, or other order of the Court. Holders of secured claims shall retain liens to the extent provided by 11 U.S.C. § 1325(a)(5)(B)(i). Secured creditors paid the full secured claim provided for by this plan shall timely satisfy any liens in the manner required by applicable law or order of this Court. Any creditor holding a claim secured by property that is removed from the protection of the automatic stay by order, surrender, or through operation of the plan will receive no further distribution from the chapter 13 trustee on account of any secured claim. This also applies to creditors who may claim an interest in, or lien on, property that is removed from the protection of the automatic stay by another lienholder or released to another lienholder, unless the Court orders otherwise. Any funds that would have been paid to any such creditor will be distributed according to the remaining terms of the plan. (The preceding language does not apply if the sole reason for its application arises under 11 U.S.C. § 362(c)(3) or (c)(4)). Any creditor affected by this provision may file an itemized proof of claim for any unsecured deficiency within a reasonable time after the removal of the property from the protection of the automatic stay. Secured creditors that will be paid directly by the debtor may send standard payment and escrow notices, payment coupons, or inquiries about insurance, and such action will not be considered a violation of the automatic stay.

2. **Long-term or mortgage debt. No default:**

The debtor is current on obligations to Flagstar Bank and will continue regular payments directly to that creditor. Description of collateral: House and lot located at 207 Flannery Court, Ft. Inn SC

3. **Long term or mortgage debt. Curing default:** 11 U.S.C. 1322(b)(3) and/or (5):

a. Arrearage payments. The trustee shall pay the arrearage as stated in the creditor's allowed claim or as otherwise ordered by the Court to creditor name at the rate of \$ \_\_\_\_\_ or more per month, for collateral description, along with 0.00% interest. The creditor shall apply trustee payments solely to those designated arrearages, i.e., those arrearages accruing before the month specified in (b) below. For so long as the debtor complies with this plan, a creditor may not declare a

<sup>4</sup> The chapter 13 trustee shall not at any time disburse to the debtor's attorney more than: (a) the unpaid balance of (1) the fee to be paid under the plan pursuant to paragraph 1 herein, or (2) the fee previously applied for and authorized pursuant to paragraph 2 herein, plus (b) any supplemental fee then applied for and authorized under the terms of the applicable Procedures for Approval of Attorney's Fees in Chapter 13 Cases.

default based on any payment delinquency to be cured by this paragraph and the creditor shall not impose any post-petition fee on account of any arrearage paid by the trustee.

b. Maintenance of regular non-arrearage payments. Beginning month and year, the Debtor shall pay directly to the creditor non-arrearage payments arising under the agreement with the secured creditor. The creditor shall apply each payment under this paragraph solely to post-petition obligations that accrue during or after the month specified herein.

4. Secured portion of claims altered by valuation and lien avoidance:

The trustee shall pay creditor name the sum of \$\_\_\_\_\_ or more per month, along with \_\_\_\_% interest until the secured claim of \$\_\_\_\_\_ established above is paid in full. The remaining portion of the allowed claim will be treated as a general unsecured claim.

5. Other secured debts (allowed claim to be paid in full without valuation or avoidance of lien):

The trustee shall pay GEMB / Rooms To Go the sum of \$3.00 or more per month, along with 5.25% interest until the allowed secured claim is paid in full.

The trustee shall pay HSBC / Best Buy the sum of \$7.00 or more per month, along with 5.25% interest until the allowed secured claim is paid in full.

6. Surrender of property:

The debtor will surrender the following property upon confirmation of the plan. The order confirming plan shall terminate the automatic stay as to that property: (Name of creditor and property address or collateral description). Any creditor affected by this provision may file an itemized proof of claim for any unsecured deficiency within a reasonable time after the surrender of the property.

7. Secured tax debt:

The trustee shall pay creditor name the sum of \$\_\_\_\_\_ or more per month until the (net balance or value) of creditor's secured claim plus \_\_\_\_% interest has been paid. If the lien is to be valued, the debtor shall file a separate motion to value the claim and establish priority of any remaining tax obligations. If a tax priority creditor files a claim designated as secured, is not treated as secured in this paragraph, and does not timely object to confirmation of this plan, then the claim may be paid as a priority claim for purposes of distributions from the trustee.

C. Priority Creditors: Priority claims shall be paid as follows:

1. Domestic Support Claims. 11 U.S.C. § 507(a)(1):

a. Pre-petition arrearages. The trustee shall pay the pre-petition domestic support obligation arrearage to name of DSO creditor, at the rate of \$\_\_\_\_\_ or more per month until the balance, without interest, is paid in full.

b. The debtor shall pay all post-petition domestic support obligations as defined in 11 U.S.C. § 101(14A) on a timely basis directly to the creditor.

c. Any party entitled to collect child support or alimony under applicable nonbankruptcy law may collect those obligations coming due after this case was filed from the income or assets of the debtor-parent/spouse without further order or relief from the automatic stay. (Any claim for child support or alimony due before this case was filed must be collected in accordance with 11 U.S.C. § 507(a)(1) and 11 U.S.C. §

1322(a)(2).)

2. Other Priority debt. The trustee shall pay all remaining pre-petition 11 U.S.C. § 507 priority claims on a *pro rata* basis.

D. Executory Contracts and Unexpired Leases: Regular payments that arise post-petition under an executory contract or lease that is being assumed shall be paid directly by the debtor according to the terms of the contract or lease. Pre-petition defaults will be cured by payments of the sum of \$ \_\_\_\_\_ or more per month by the trustee or the debtor according to paragraph II(D). Claims arising from the rejection of executory contracts or leases shall be general unsecured claims unless otherwise ordered by the Court.

E. General Unsecured Creditors: General unsecured creditors shall be paid allowed claims *pro rata* by the trustee to the extent that funds are available after payment of all other allowed claims. The debtor does not propose to pay 100% of general unsecured claims.

**V. PROPERTY OF THE ESTATE, STATUS AND OBLIGATIONS OF THE DEBTOR AFTER CONFIRMATION:** Upon confirmation of the plan, property of the estate will remain property of the estate, but possession of property of the estate shall remain with the debtor. The chapter 13 trustee shall have no responsibility regarding the use or maintenance of property of the estate. The debtor is responsible for protecting the non-exempt value of all property of the estate and for protecting the estate from any liability resulting from operation of a business by the debtor. Nothing herein is intended to waive or affect adversely any rights of the debtor, the trustee, or party with respect to any causes of action owned by the debtor.

Date: \_\_\_\_\_

8/16/11

BY: \_\_\_\_\_

The McMaster Law Firm, L.L.C.

Attorneys for Debtor(s)

William C. McMaster, III, District Court ID# 7729

Gina R. McMaster, District Court ID# 6714

8 Williams Street

Greenville, SC 29601

(864) 232-1550

Debtor

Debtor

#### CERTIFICATE OF SERVICE

The above signing parties certify that the foregoing Notice, Plan and Motions was served on all creditors and parties in interest entitled to such notice on the above stated date. The parties served are individually listed on the accompanying list or mailing matrix

Gretchen D. Holland via electronic notification

12 day of August, 2011

Bryan E. Powell  
Bryan E. Powell, Legal Assistant

Label Matrix for local noticing  
0420-7  
Case 11-03085-hb  
District of South Carolina  
Spartanburg  
Wed Aug 17 10:08:11 EDT 2011

Bank Of America  
PO Box 17054  
Wilmington DE 19850-7054

Patti H. Bass  
Bass & Associates, PC  
3936 E. Ft. Lowell Rd., Suite 200  
Tucson, AZ 85712-1083

Chase  
PO Box 15298  
Wilmington DE 19850-5298

Chase Bank USA, N.A.  
PO Box 15145  
Wilmington, DE 19850-5145

Dillon Law Firm  
1130 Hurricane Shoals Road  
Ste 600  
Lawrenceville GA 30043-4850

FIA Card Services, NA as successor in intere  
Bank of America NA and MBNA America Bank  
PO Box 15102  
Wilmington, DE 19886-5102

Fia Csn  
PO Box 26012  
Nc4-105-02-77  
Greensboro NC 27420-6012

Flagstar Bank  
Attn: Bankruptcy Dept MS-S144-3  
5151 Corporate Dr  
Troy MI 48098-2639

Gemb/rooms To Go  
PO Box 981439  
El Paso TX 79998-1439

HSBC Bank Nevada, N.A.  
Bass & Associates, P.C.  
3936 E. Ft. Lowell Rd, Suite 200  
Tucson, AZ 85712-1083

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3 Caledon Court, Suite A  
Greenville, SC 29615-3192

Hsbc Best Buy  
Attn: Bankruptcy  
PO Box 5263  
Carol Stream IL 60197-5263

Lvnv Funding Llc  
PO Box 740281  
Houston TX 77274-0281

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Greenville, SC 29601-3143

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PO Box 12265  
Columbia SC 29211-2265

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Fountain Inn, SC 29644-1308

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Atlanta GA 30303-2531

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Greenville SC 29601-3143

US Trustee's Office  
Strom Thurmond Federal Building  
1835 Assembly St.  
Suite 953  
Columbia, SC 29201-2448

End of Label Matrix  
Mailable recipients 19  
Bypassed recipients 0  
Total 19